

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Rate Adjustment Due to Extraordinary or
Exceptional Circumstances

Docket No. R2010-4R

ORDER ADDRESSING MOTION TO SUPPLEMENT
AND RELATED FILING

(Issued December 20, 2011)

I. INTRODUCTION

On September 20, 2011, the Commission issued Order No. 864, which resolved issues that were considered during the remand of this proceeding.¹ In that order, the Commission directed the Postal Service to “file a statement indicating whether and how it wishes to pursue its pending Exigent Request.” *Id.* at 54.

¹ Order Resolving Issues on Remand, September 20, 2011 (Order No. 864).

On November 7, 2011, the Postal Service filed a statement indicating that it will proceed with its Exigent Request.² The Statement was accompanied by a motion for leave to supplement the record with materials identified in the Statement.³

On November 14, 2011, a group of mailers comprised of the Alliance of Nonprofit Mailers, Association for Postal Commerce, Direct Marketing Association, Inc., and Magazine Publishers of America, Inc. (ANM, et al.) filed a response to the Motion to Supplement.⁴ On November 21, 2011, the Postal Service filed two witness statements accompanied by a library reference and Excel worksheets in accordance with its stated plan for pursuing its Exigent Request.⁵ Other information described in the Statement has yet to be filed with the Commission.

II. BACKGROUND

A. Postal Service Statement and Motion to Supplement

1. Postal Service Statement

The Statement describes the Postal Service's three-step plan for proceeding with its Exigent Request. First, pursuant to Order No. 864, the Postal Service asserts that it will "quantif[y] the net adverse financial impact of the 2008-2009 recession on postal volumes through supportable methods" using the "Method 5" analysis that it previously

² Statement of the United States Postal Service Regarding Its Exigent Request, November 7, 2011 (Statement). The Postal Service filed the Statement after the Commission denied its motion to stay this proceeding. Order No. 937, Order Denying Motion to Stay and Establishing Further Procedures, October 31, 2011.

³ Motion of the United States Postal Service for Leave to Supplement the Record, November 7, 2011 (Motion to Supplement).

⁴ Response of Alliance of Nonprofit Mailers, Association for Postal Commerce, Direct Marketing Association, and Magazine Publishers of America, Inc., to USPS Motion to Supplement Record, November 14, 2011 (ANM, et al. Response).

⁵ United States Postal Service Notice of Filing, November 21, 2011 (Notice of Filing).

presented in its initial comments in this proceeding.⁶ The Postal Service explains that it will perform a “source of change” analysis to determine what portion of the volume losses for each market dominant product is attributable to the recession. Statement at 4. It states that it will multiply that portion of the volume losses by each product’s unit contribution. *Id.* The Postal Service contends that the sum of these calculations will equal approximately \$2.34 billion, which it claims is a lower-bound estimate of the net adverse financial impact of the recession on postal volumes. *Id.*; Postal Service Comments at 45.

To support this quantification, the Postal Service moved to supplement the record in this proceeding with its responses to interrogatories GCA/USPS-T2-1 and 2 in Docket No. N2010-1, as well the accompanying Excel worksheets. Statement at 4; see Motion to Supplement at 1. It also seeks to incorporate testimony explaining the analysis in the worksheets and calculating the lost contribution from recession-related volume declines. *Id.*

Second, the Postal Service contends that resolving the Exigent Request requires “determining that rate increases equaling the quantified net adverse financial impact would be necessary, under best practices of honest, efficient, and economical management....” Statement at 3. The Postal Service argues that it has fully addressed this issue in its “Exigent Request, as well as its various pleadings since then (including its Initial Comments on remand)....” *Id.* at 4. It asserts that it may submit testimony or further legal analysis updating its prior submissions and that it is prepared to respond to any inquiry from the Commission to supplement the information already provided. *Id.* at 4-5.

Third, the Postal Service takes the position that resolving the Exigent Request requires “identifying a set of rates that are equal to or less than the quantified net adverse financial impact, and that are ‘reasonable and equitable as among types of

⁶ Statement at 3-4; see *also* Initial Comments of the United States Postal Service Regarding Court Remand, July 25, 2011, at 44-46 (Postal Service Comments).

users of market dominant products.” *Id.* at 3. The Postal Service reiterates the statement in its initial comments that “it would not challenge a net adverse financial impact quantification of at least \$2.3 billion....” *Id.* at 5. It offers to provide a pricing proposal keyed to that amount, as well as a proposal to harmonize the proposed rates with recent market dominant price adjustments.⁷

The Postal Service concludes that if its plan is acceptable to the Commission, it will file its witness statements and any further legal analysis by November 21, 2011. Statement at 5.

2. Motion to Supplement

The Postal Service filed the Motion to Supplement with its Statement to request that the record incorporate the following materials listed in the Statement:

- Postal Service responses to interrogatories GCA/USPS-T2-1 and 2 and supporting worksheets in Docket No. N2010-1;⁸
- Testimony explaining the analysis contained in the Excel worksheets and calculating the lost contribution caused by recession-related volume losses;
- Testimony explaining why rate increases equaling the net adverse financial impact are “necessary, under best practices of honest, efficient, and economical management....”; and
- Legal analysis supporting the above testimony.

Motion to Supplement at 1.

⁷ *Id.* at 5 n.14; see Docket No. R2012-3, Order No. 987, Order on Price Adjustments for Market Dominant Products; Related Mail Classification Changes, November 22, 2011; Docket No. R2011-2, Order No. 675, Order Revising Postal Service Market Dominant Price Adjustments, February 16, 2011.

⁸ Docket No. N2010-1, Responses of the United States Postal Service to GCA Interrogatories GCA/USPS-T2-1-2, Redirected from Witness Corbett, May 17, 2010.

B. ANM, et al. Response

On November 14, 2011, ANM, et al. filed its response to the Motion to Supplement. They discuss what workpapers and other supporting information the Postal Service must produce before other participants should be required to respond to that evidence. ANM, et al. Response at 1. They argue that the Postal Service must produce the underlying data, assumptions, and workpapers to other participants and the Commission. *Id.* at 3. They also contend that interested persons need adequate time to analyze the supporting materials and obtain further information before they can be expected to respond. *Id.*

Specifically, ANM, et al. seek information regarding the duration of the exigent rate adjustment, loss of volume and net contribution caused by the recession, and all other information on which the Postal Service intends to rely. *Id.* at 4-11, 14. They also request copies of all studies and underlying calculations regarding efforts to reduce costs and increase revenue in order to determine whether the Postal Service followed “best practices of honest, efficient, and economical management....” *Id.* at 11-13; see 39 U.S.C. § 3622(d)(1)(E). They conclude that the Commission should direct the Postal Service, as part of its supplemental filing of evidence, to file its entire case. ANM, et al. Response at 14.

C. Notice of Filing

On November 21, 2011, the Postal Service filed witness statements from Thomas E. Thress and Virginia J. Mayes that calculate the net adverse financial impact of the recession on postal volumes to be approximately \$2.34 billion. Notice at 1. The witness statements are accompanied by a library reference explaining the source of change analysis contained in the Postal Service’s responses to interrogatories GCA-

USPS-T2-1 and 2 in Docket No. N2010-1, as well as Excel worksheets using the source of change analysis to calculate the FY 2008 and FY 2009 contribution losses.⁹

The Postal Service reiterates its contention that an exigent rate adjustment of \$2.34 billion would be consistent with section 3622(d)(1)(E). Notice at 2. It asserts that ANM, et al. recommend a level of discovery that is inconsistent with the expedited procedures mandated for exigent requests. *Id.* at 2 n.3.

III. COMMISSION ANALYSIS

In Order No. 864, the Commission stated that it would apply its interpretation of the causal nexus of “due to” to evaluate the remanded Exigent Request if the Postal Service wished to pursue it. Order No. 864 at 53. Although the Postal Service asserted that “it will proceed with its Exigent Request[,]” Statement at 1, it has not provided all of the information necessary for the Commission to evaluate the Exigent Request.¹⁰

If the Postal Service wishes to pursue its Exigent Request, it must complete the submission of its entire case to the Commission. A complete case would include all information, materials, and testimony on which the Postal Service would rely to demonstrate that its Exigent Request satisfies the causal nexus of “due to,” as interpreted by the Commission in Order No. 864, as well as the remaining requirements of section 3622(d)(1)(E).

A complete case contains the information required by the Commission’s rules on exigent requests. See 39 CFR part 3010, subpart E. This includes the following:

- A schedule of the proposed rates, harmonized with recent market dominant price adjustments;¹¹

⁹ *Id.*; see also Excel File MayesAttach.xls; USPS-R2010-4R/1, FY 2008 and FY 2009 Recession-Related Volume Loss Documentation.

¹⁰ The Postal Service asks the Commission to exercise its authority under its rules to request any additional or clarifying information from the Postal Service. Statement at 5; Notice at 2 n.3. However, the Postal Service is responsible in the first instance for submitting a complete case to the Commission if the Postal Service wishes to pursue its Exigent Request.

¹¹ 39 CFR 3010.61(a)(1); Statement at 5 n.14.

- Calculations quantifying the increase for each affected product and class;¹²
- A complete explanation of “how both the requested overall increase, and the specific rate increases requested, relate to [the exigent] circumstances”;¹³
- A full discussion of why the requested increases are “necessary to enable the Postal Service, under best practices of honest, efficient and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States”;¹⁴
- A full discussion of why the requested increases are “reasonable and equitable as among types of users of market dominant products”;¹⁵
- The duration of the requested increases;¹⁶ and
- A calculation of unused rate adjustment authority.¹⁷

As the Commission stated in Order No. 864, if the Postal Service desires to pursue its Exigent Request, it may rely on any materials that were in the record in this proceeding as of September 30, 2010. Order No. 864 at 54. However, the Postal Service should “identify with particularity those portions of the record as of September 30, 2010 that it believes support its Exigent Request.” *Id.* This includes specifying the portions of those materials it is relying on, including page and section numbers.¹⁸

The Postal Service also would need to file a motion to supplement if it decides to “submit testimony or further legal analysis updating its prior submissions,” see

¹² 39 CFR 3010.61(a)(2).

¹³ *Id.* 3010.61(a)(3).

¹⁴ *Id.* 3010.61(a)(4); 39 U.S.C. § 3622(d)(1)(E).

¹⁵ 39 CFR 3010.61(a)(5); see 39 U.S.C. § 3622(d)(1)(E).

¹⁶ 39 CFR 3010.61(a)(6). This would include “[a]n explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent increases in whole or in part[.]” *Id.*

¹⁷ *Id.* 3010.63.

¹⁸ For example, in its Statement, the Postal Service asserts that its Exigent Request and initial comments fully addressed the issue of whether the proposed increases are “necessary, under best practices of honest, efficient, and economical management....” Statement at 3-4. If the Postal Service relies on these materials, it must identify the specific pages and section numbers that it believes address this issue.

Statement at 4, or if it wishes to rely on materials that were not part of the record as of September 30, 2010. See Order No. 864 at 54.

Motion to Supplement and ANM, et al. Response. The Postal Service has filed its Motion to Supplement as contemplated by Order No. 864. The Commission grants the Motion to Supplement to incorporate the statements by witnesses Thress and Mayes into the record, as well as the accompanying library reference and Excel worksheets. Additionally, this order grants the Postal Service request to submit additional materials to perfect its submission as required by Commission rules. See, *infra*, at 6-7.

ANM, et al. argue that the Postal Service must provide additional information before they and other participants can be expected to respond. As noted above, the Postal Service has not completed the submission of its case to the Commission. Once the Postal Service submits its entire case, the Commission will determine the need for additional information.

It is ordered:

1. The Commission grants the Motion to Supplement to incorporate statements by witnesses Thress and Mayes into the record, as well as the accompanying library reference and Excel worksheets.
2. The Postal Service may submit additional materials as required by Commission rules to complete its Exigent Request.

By the Commission.

Shoshana M. Grove
Secretary